

FISCAL NOTE

Bill #: SB0379

Title: Corporate accountability act

Primary Sponsor: Wheat, M.

Status: As introduced

Sponsor signature	Date	David Ewer, Budget Director	Date
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Fiscal Summary

	<u>FY 2006</u> <u>Difference</u>	<u>FY 2007</u> <u>Difference</u>
Expenditures:		
General Fund	\$0	\$0
Revenue:		
General Fund	\$0	\$0
Net Impact on General Fund Balance:	\$0	\$0

- | | |
|---|--|
| <input type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached | <input type="checkbox"/> Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Commerce (DOC)

1. Publicly traded corporations conducting business in Montana would have to certify to the Montana Secretary of State that they are in compliance with the federal Sarbanes-Oxley Act of 2002 (Act) and the regulations adopted pursuant to federal law.
2. The Board of Investments could not invest public funds in a publicly traded corporation that is not in compliance with the Act. However, the board would not be required to divest an existing investment in a publicly traded corporation that is not in compliance with the Act to the detriment of the state's financial interest.
3. Most of the corporations in which the board invests do not conduct business in Montana and therefore will not be required to certify to the Secretary of State their compliance with the Act.
4. In order for the board to comply with the provisions of SB 379 it must be able to ascertain whether corporations in which it invests are in compliance with the Act. The board recently contacted Securities and Exchange Commission staff to ascertain if they or any other body maintains a list of corporations that are out of compliance with the Act. SEC staff stated they do not currently maintain any kind of list of corporate compliance because the law is so complex a corporation could be in compliance with all but one provision and still be out of compliance; they also stated that to the best of their knowledge no one

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(continued)

including the US Government maintained such a list. Without such a list the board would have no way to discern which corporations were not in compliance with the Act.

5. Given the above assumptions it is not possible to estimate the potential fiscal impact of the bill.

Department of Labor and Industry (DOLI)

6. The department assumes that the prohibitions outlined in SB 379 against contracting with a publicly traded corporation that does not comply with sections 1 and 2 and the federal Sarbanes-Oxley Act of 2002 will apply only to contracts that are subject to the competitive procurement requirements of Title 18, chapter 1, MCA.
7. The department assumes that no state or federal agency or entity maintains a list of publicly traded corporations that are not in compliance with sections 1 and 2 of SB 379 and/or the Sarbanes-Oxley Act of 2002 and its implementing regulations.
8. The department assumes that state agencies are not required by SB 379 to independently determine whether a publicly traded corporation is or is not in compliance with the provisions of the Sarbanes-Oxley Act of 2002 and its implementing federal regulations.
9. Based upon assumptions 1 through 3, the department is unable to estimate the fiscal impact associated with SB 379.
10. The department and Board of Public Accountants (board) would undertake rule making to implement section 6. The department would absorb costs associated with rulemaking.

State Auditors Office (SAO)

11. The State Auditor's Office estimates there will be no fiscal impact to the office during the 2006-2007 biennium. The State Auditor's Office may approach the next legislature for additional FTE and operating costs due to increased workload related to the implementation of this bill.

TECHNICAL NOTES:

Department of Commerce (DOC)

1. The Board of Investments currently invests nearly \$1.0 billion in equity indexed funds. The index fund managers invest in all publicly traded companies in the index and the companies within the index may frequently change. The index fund manager is not at liberty to divest a corporation's stock because it is not in compliance with the Act nor can the manager refuse to purchase a corporation's stock because the corporation is not in compliance with the Act. Without an exemption in this bill for indexed investing, the board would not be able to invest in index funds.
2. The board currently has invested in excess of \$1.0 billion of pension funds in international publicly traded corporations, many of which may not be subject to the Act unless they are traded on US stock markets. Without an exemption in this bill for investments in international companies that are not subject to the Act, the board would not be able to invest in international companies.

Department of Labor and Industry (DOLI)

3. The title of SB 379 identifies the bill as "authorizing the Board of Public Accountants to adopt rules" The bill text (section 6, amending 37-50-203, MCA), however, requires the board adopt certain rules. To the extent the use of the word "authorizing" in SB 379 title implies that the board has discretion to decide whether or not to adopt the rules contemplated by SB 379, the bill title might not correctly reflect the intent. Alternatively, if the intent is to give the board discretion as to the adoption of such rules, the provisions of section 6 should amend 37-50-203(3), MCA, rather than 37-50-203(2), MCA.